

REMARKS/ARGUMENTS

Favorable reconsideration of the present application, in view of the above amendments and in light of the following discussion, is respectfully requested.

Claims 1-20 are pending. Claims 1-10 are amended. Claims 11-20 are new. No new matter is introduced.¹

In the outstanding Office Action, Claim 10 was rejected under 35 U.S.C. § 101 as being non-statutory subject matter. Claims 1-4 and 8-10 were rejected under 35 U.S.C. § 102(e) as being anticipated by McCaleb (U.S. Patent No. 6,751,794). Claims 5-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McCaleb in view of Xian (U.S. Patent No. 6,327,584).

With respect to the rejection under 35 U.S.C. § 101, amended Claim 10 recites, “a computer readable medium including computer executable instructions, wherein the instructions, when executed by a processor, cause the processor to perform a method”. Amended Claim 10 is directed towards statutory subject matter.

MPEP § 2106 discusses statutory subject matter in relation to data structures of a computer readable medium. Particularly, MPEP § 2106.01(I) provides,

... a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material. When a computer program is claimed in a process where the computer is executing the computer program's instructions, USPTO personnel should treat the claim as a process claim.

Thus, based on the clear language of this section, Claim 10 is statutory as it defines a process which is realized based on the interrelationship of the instructions on the medium and recited

¹ Amended Claims 1-10 find support in the claims as previously presented. New Claims 11-20 find support in the original claims and original specification at least at page 12, line 13 through page 13, line 19.

hardware components. Accordingly, it is respectfully requested that the rejection of Claim 10 be withdrawn.

It is respectfully requested that the rejection of Claims 1-4 and 8-10 as anticipated by McCaleb be withdrawn.

Amended independent Claim 1 recites an information processing apparatus having a memory means for separately storing functional generation information and application software. Amended independent Claim 1 further recites a managing means for managing first functional generation information and an obtaining means for obtaining second functional generation information. The information processing apparatus further includes a comparing and determining means for comparing the first functional generation information and the second functional generation information, and an information updating means for updating the first functional generation information.

Turning to the applied reference, McCaleb illustrates a server 105 that maintains a client database to keep track of the client systems 110 and 115.² The server 105 also maintains a part database 120, containing software patches and software updates for the client system 110 and 115.³ McCaleb describes one embodiment in which server 105 serves as a central point for receiving update requests from the client systems 110 and 115 and for retrieving information from the databases to satisfy the update requests.⁴ However, McCaleb fails to disclose or suggest a memory means for separately storing functional generation information and application software.

As noted above, amended independent Claim 1 recites an information processing apparatus that includes a memory means that separately stores application software and functional generation information and an information updating means that updates the first

² See McCaleb, at column 3, lines 60-64.

³ See McCaleb, at column 3, lines 64-68.

⁴ See McCaleb, at column 4, lines 6-9.

functional generation information *stored in the memory means*. In comparison, server 105 of McCaleb updates separate clients 110 and 115. However, server 105 does not update application software or functional generation information within itself. Accordingly, McCaleb does not disclose or suggest all of the features of the amended independent Claim 1. It is submitted that amended independent Claims 1 and the depending Claims therefrom are in condition for allowance.

Although drawn to different statutory subject matter classifications, amended independent Claims 8-10 and new independent Claim 20 recite features that are substantially similar to that of amended independent Claim 1. Therefore for substantially the same the reasons stated above for Claim 1, McCaleb does not disclose or suggest all of the features of amended independent Claims 8-10 and new independent Claim 20. It is submitted that amended independent Claims 8-10 and new independent Claim 20 are in condition for allowance.

Further, dependent Claim 4 recites additional features that are not disclosed or suggested by the cited references. Claim 4 recites a function determining means for determining whether the application software has a function corresponding to a second functional generation information. Claim 4 further recites, when a function determining means determines that the application software does not have a function corresponding to the second functional generation information, the software updating means updates the application software stored in the memory means to a newest application software corresponding to the second functional generation information.

Turning to the applied reference, McCaleb describes that server 105 accesses a client database 125, which contains information about the client systems 110 and 115.⁵ McCaleb also describes that client systems 110 and 115 may perform a self-check by sending their

⁵ See McCaleb, at column 4, lines 19-21.

current software configurations to server 105.⁶ However, McCaleb fails to disclose or suggest the function determining means, recited in Claim 4. In particular, Claim 4 requires a *single* information processing apparatus that both (1) determines whether the application software stored in the information processing apparatus includes a function corresponding to the claimed second function and (2) updates the application software. Instead, McCaleb illustrates a *client* 110 that executes a self-check and a *server* 105 that performs the update on client 110. A *client* and a *server* are not a *single information processing apparatus* that performs both the claimed function determining and updating.

Amended Claim 5 recites further features that are not disclosed or suggested by the cited references. Claim 5 recites an information processing apparatus that includes a medium determining means for determining whether a recording medium is loaded and a reading means for reading third functional generation information. Claim 5 also recites a comparing and determining means for comparing the third functional generation information as well as first functional generation information and second functional generation information. The comparing and determining means determines which of the first, second, or third functional generation information is the newest functional generation information.

Turning to the applied references, McCaleb illustrates a server 105 that maintains a client database 125 and a part database 120 containing software patches and software updates. However, McCaleb is silent to a comparing and determining means for *comparing the third functional generation information*, a medium determining means, and a reading means for reading third functional generation information. Xian fails to cure the deficiency in McCaleb. Xian describes updating a personal computer from an information source such as a CD-ROM.⁷ However, Xian is silent with respect to a *comparing and determining means*

⁶ See McCaleb, at column 4, lines 31-33.

⁷ See Xian, at column 13, lines 32-34.

for comparing third functional generation information to first and second functional generation information. Particularly, Xian is silent in determining which of the first, second, or third functional generation information is a newest functional generation information.

Accordingly, even the combined teachings of McCaleb and Xian do not disclose or suggest all the features of amended Claim 5. It is submitted that amended Claim 5, and Claims 6-7 dependent thereon, are in condition for allowance.

New dependent Claims 11-13 depend from Claim 1 and recite additional features that are not disclosed or suggested in the cited references. Moreover, as discussed above, Claim 1 is believed to be in condition for allowance. Accordingly, new Claims 11-13 are believed to be in condition for allowance for at least the same reasons as Claim 1, from which they depend.

New dependent Claims 14-16 depend from Claim 8 and recite additional features that are not disclosed or suggested in the cited references. Moreover, as discussed above, Claim 8 is believed to be in condition for allowance. Accordingly, new Claims 14-16 are believed to be in condition for allowance for at least the same reasons as Claim 8, from which they depend.

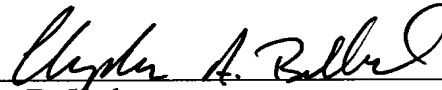
New dependent Claims 17-19 depend from Claim 10 and recite additional features that are not disclosed or suggested in the cited references. Moreover, as discussed above, Claim 10 is believed to be in condition for allowance. Accordingly, new Claims 17-19 are believed to be in condition for allowance for at least the same reasons as Claim 10, from which they depend.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-20 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representative at the below-listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/07)

Christopher A. Bullard
Registration No. 57,644